

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 28, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: CAMI BRADEN,

Petitioner.

No. 16-8110
(D.C. Nos. 1:09-CR-00354-WFD-4 &
1:13-CV-00131-NDF)
(D. Wyo.)

ORDER

Before **PHILLIPS, O'BRIEN**, and **MORITZ**, Circuit Judges.

Cami Braden, proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside or correct her sentence. Because Ms. Braden has failed to make the required showing, we deny authorization.

Ms. Braden was found guilty after a jury trial of one count of conspiracy to possess with intent to distribute and to distribute methamphetamine. She was sentenced to 151 months' imprisonment. We affirmed her conviction on direct appeal. *See United States v. Braden*, 458 F. App'x 751, 755 (10th Cir. 2012). She subsequently filed a § 2255 motion, but the district court dismissed it as untimely.

In August of this year, Ms. Braden filed another § 2255 motion. The district court dismissed that motion for lack of jurisdiction because Ms. Braden had not received authorization from this court to file a second or successive § 2255 motion.¹ She now

¹ Ms. Braden complains that the merits of her first § 2255 motion were never heard by any court because the motion was dismissed as untimely. But a dismissal based

seeks to obtain the appropriate authorization from this court. To do so, she must show that her proposed claim relies on either:

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [her] guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h).

Ms. Braden asserts that she is entitled to file a successive § 2255 claim because she just learned of Amendment 794 to the Sentencing Guidelines, which gave guidance on adjusting a Guidelines calculation if a defendant was a minor participant in a crime. But an amendment to the Sentencing Guidelines is not new evidence that establishes she was not guilty of the offense, as required by § 2255(h)(1). Likewise, an amendment to the Sentencing Guidelines is not a new rule of constitutional law that has been made retroactive to cases on collateral review by the Supreme Court, as required by § 2255(h)(2).

Because Ms. Braden has failed to meet the standards for authorization in § 2255, we deny her motion. This denial of authorization “shall not be appealable and shall not

on timeliness does constitute a decision on the merits and means that any further § 2255 motions are subject to the second or successive authorization requirements. *See In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011).

be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C.

§ 2244(b)(3)(E).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk